

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE DPP BEEF LITIGATION This document applies to: ALL CASES	Case No. 20-cv-1319 (JRT/HB) (Lead Case)
IN RE CATTLE ANTITRUST LITIGATION This document relates to: ALL CASES	Case No. 19-cv-1222 (JRT/HB)
KENNETH PETERSON, et al., Plaintiffs, v. JBS USA FOOD COMPANY HOLDINGS, et al., Defendants.	Case No. 19-cv-1129 (JRT/HB)
ERBERT & GERBERT’S, INC., Plaintiff, v. JBS USA FOOD COMPANY HOLDINGS, et al., Defendants.	Case No. 20-cv-1414 (JRT/HB)
WINN-DIXIE STORES, INC., AND BI-LO HOLDING, LLC, Plaintiffs, v. CARGILL, INC., et al., Defendants.	Case No. 21-cv-1751 (JRT/HB)

**STIPULATION REGARDING COORDINATION,
RESPONDING TO COMPLAINTS, AND CASE MANAGEMENT**

The parties in *In re Cattle Antitrust Litigation*, Case No. 19-cv-1222;¹ *Peterson v. JBS USA Food Company Holdings, et al.*, Case No. 19-cv-1129; *In re DPP Beef Litigation*, Case No. 20-cv-1319;² and *Erbert & Gerbert's, Inc. v. JBS USA Food Company Holdings, et al.*, Case No. 20-cv-1414, have already agreed to an Order Regarding Production of Electronically Stored Information and Paper Documents (“ESI Protocol”) and a Protective Order, both of which the Court entered in 2020.³

On February 18, 2021, motions to dismiss were filed in *In re Cattle*, *Peterson*, *In re DPP Beef*, and *Erbert & Gerbert's*.⁴

On August 2, 2021, the plaintiffs in *Winn-Dixie Stores, Inc., and Bi-Lo Holding, LLC v. Cargill, Incorporated, et al.*, Case No. 21-cv-1751, filed their complaint. That case was reassigned to this Court as a related case. Plaintiffs and Defendants in *Winn-Dixie* agreed to meet and confer on a schedule for Defendants to answer or otherwise plead to the complaint in that case after the Court ruled on Defendants’ then-pending motions to

¹ *In re Cattle* is composed of *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, et al., v. Tyson Foods, Inc., et al.*, 19-cv-1222, *Sevy v. Tyson Foods, Inc., et al.*, No. 19-cv-1243 (JRT/HB), and *Wright, et al., v. Tyson Foods, Inc., et al.*, No. 19-cv-1350 (JRT/HB). See Case No. 19-cv-1222, ECF No. 88.

² *In re DPP Beef* is composed of *Samuels et al., v. Cargill, Incorporated*, 20-cv-1319, and *Olean Wholesale Grocery Cooperative, Inc. v. Cargill, Incorporated*, 20-cv-1602. See Case No. 19-cv-1319, ECF No. 71.

³ E.g., *In re DPP Beef*, Case No. 20-cv-1319, ECF Nos. 93 (ESI Protocol), 123 (Protective Order).

⁴ E.g., *In re DPP Beef*, Case No. 20-cv-1319, ECF No. 166.

dismiss in the other cases. *Winn-Dixie*, Case No. 21-cv-1751, ECF No. 17.

On September 1, 2021, the Court entered an Order to Consolidate Cases, designating *In re DPP Beef* as the lead case, and ordered that all future filings should be made on that docket and not the dockets of any of the other related cases.⁵ The body of the order, however, only referred specifically to *Samuels, et al., v. Cargill, Incorporated, et al.*, Case No. 20-cv-1319, and *Olean Wholesale Grocery Cooperative, Inc. v. Cargill, Incorporated*, Case No. 20-cv-1602, which were consolidated into *In re DPP Beef*.

On September 14, 2021, the Court entered an order granting in part and denying in part Defendants' Joint Motion to Dismiss, denying individual Defendants' motions to dismiss, and granting Plaintiffs' Motion to Approve Alternative Service.⁶ In that order, the Court granted certain Plaintiffs leave to amend their complaints for certain narrow purposes: in *Peterson* and *Erbert & Gerbert's*, the Indirect Purchaser Plaintiffs were granted leave to amend their Mississippi antitrust claims; and in *In re DPP Beef*, *Peterson*, and *Erbert & Gerbert's*, the Direct and Indirect Purchaser Plaintiffs were granted leave to amend to rename JBS USA Food Company Holdings as JBS USA Food Company.⁷

Before the ruling on the motions to dismiss, the parties in *In re Cattle*, *Peterson*, *In re DPP Beef*, and *Erbert & Gerbert's* engaged in certain discovery pursuant to the Court's

⁵ *In re Cattle*, Case No. 19-cv-1222, ECF Nos. 408, 409; *Peterson*, Case No. 19-cv-1129, ECF Nos. 329, 330; *Erbert & Gerbert's*, Case No. 20-cv-1414, ECF Nos. 191, 192; *Winn-Dixie*, Case No. 21-cv-1751, ECF Nos. 21, 22.

⁶ *E.g.*, *In re DPP Beef*, Case No. 20-cv-1319, ECF No. 238.

⁷ JBS USA Food Company Holdings was also named as a defendant in *Winn-Dixie*. See Case No. 21-cv-1751, ECF No. 1.

prior orders, including exchanging initial and Attachment 1 disclosures, requests for production and objections and responses thereto, and proposals and counterproposals relating to document custodians, non-custodial sources of information, and applicable date ranges.⁸ Defendants also made certain limited productions of documents.

In light of the foregoing, in order to simplify these proceedings and reduce the burdens on the parties and the judicial system, and in the interest of securing the just, speedy, and inexpensive determination of these and any future related actions, the parties in each of the above-captioned actions, by and through their attorneys, hereby stipulate that an order as follows be entered:

PRETRIAL COORDINATION

1. The *In re Cattle Antitrust Litigation*, Case No. 19-cv-1222 (the “Cattle Antitrust Action”); *Peterson v. JBS USA Food Company Holdings, et al.*, Case No. 19-cv-1129 (the “Consumer Indirect Purchaser Plaintiff Action”); *In re DPP Beef*, Case No. 20-cv-1319 (the “Direct Purchaser Plaintiff Action”); *Erbert & Gerbert’s, Inc. v. JBS USA Food Company Holdings, et al.*, Case No. 20-cv-1414 (the “Commercial and Institutional Indirect Purchaser Plaintiff Action”); and *Winn-Dixie Stores, Inc., and Bi-Lo Holding, LLC v. Cargill, Incorporated, et al.*, Case No. 21-cv-1751, are coordinated for pretrial purposes.

⁸ The foregoing discovery was stayed as to JBS S.A. pending the resolution of the motions to dismiss. *E.g.*, Case No. 20-cv-1319, ECF No. 72, ¶4.d; Case No. 19-cv-1222, ECF No. 196, ¶4.d. In addition, JBS USA Food Company was not properly named as a defendant in *In re DPP Beef*, *Peterson*, or *Erbert & Gerbert’s*, and therefore did not previously respond to discovery or make disclosures in those cases.

2. This Stipulation shall not constitute an agreement that these actions should be consolidated for trial, nor have the effect of making any person or entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

3. Any lawyer who has been admitted *pro hac vice* in any of the actions need not seek *pro hac vice* admission in any other action. Any lawyer who has filed a notice of appearance in any of the actions need not file an appearance in any other action. It is incumbent upon each lawyer to ensure his or her appearance is listed in the coordinated proceedings for ECF purposes.

4. Counsel shall call to the attention of the Clerk the filing or transfer of any case which might properly be coordinated with these actions.

CAPTION

5. Every pleading filed in these coordinated actions, and in any action subsequently coordinated with these actions, shall be filed in the lead case (No. 20-cv-1319 (JRT/HB)) and shall bear the following caption:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

<i>IN RE CATTLE AND BEEF ANTITRUST LITIGATION</i>

This Document Relates To:

No. 0:20-cv-1319 JRT/HB

6. When a filing is intended to be applicable to all actions to which this Order is applicable, the words “All Actions” shall appear immediately after the words “This

Document Relates to:” in the caption above. When a filing is intended to be applicable only to some, but not all of such actions, the group name (*e.g.*, Cattle Antitrust Action (*i.e.*, *In re Cattle*), Direct Purchaser Plaintiff Action (*i.e.*, *In re DPP Beef*), Commercial and Institutional Indirect Purchaser Plaintiff Action (*i.e.*, *Erbert & Gerbert’s*), or Consumer Indirect Purchaser Plaintiff Action (*i.e.*, *Peterson*)), or the unique docket number or case name for each action to which the filing is intended to be applicable shall appear there (*e.g.*, *Winn-Dixie*).

NEWLY FILED OR TRANSFERRED ACTIONS

7. When an action that relates to the same subject matter and asserts substantially similar claims as these coordinated actions is hereafter filed in or transferred to this Court and assigned to the undersigned, it shall be coordinated with these actions as part of the *In re Cattle and Beef Antitrust Litigation*, and the Clerk of Court shall:

- a. docket a copy of this Order in the separate file for such action,
- b. make an appropriate entry in the lead case docket that a new case has been assigned, and
- c. note on the docket that, upon entry of this Order, all papers shall be filed in the Lead Case file and no further papers shall be filed in that individual case docket.

8. The terms of this Order shall apply automatically to all such newly filed, removed, or transferred actions that are coordinated as part of *In re Cattle and Beef Antitrust Litigation*.

AMENDING COMPLAINTS

9. Plaintiffs in *In re DPP Beef, Peterson, Erbert & Gerbert's*, and *Winn-Dixie* may amend their complaints in compliance with the Court's September 14, 2021 Order no later than **October 15, 2021**.

10. Defendants, except as noted below, agree to accept service of any such amended complaints in these four actions electronically consistent with Federal Rule of Civil Procedure 5. With respect to JBS S.A. specifically, JBS S.A. reserves all rights concerning service but agrees that the Court's order concerning the motion for alternative service filed in *In re Cattle, In re DPP Beef, Peterson*, and *Erbert & Gerbert's* shall apply in the *Winn-Dixie* case and to the amended complaints to be filed in *In re DPP Beef, Peterson, Erbert & Gerbert's*, and *Winn-Dixie*.

ANSWERING COMPLAINTS

11. Defendants will answer *In re Cattle* Plaintiffs' operative complaint no later than **January 28, 2022**, by filing an answer to the Third Consolidated Amended Class Action Complaint (ECF No. 312) in *In re Cattle*.

12. Defendants will answer the *In re DPP Beef, Peterson, Erbert & Gerbert's* and *Winn-Dixie* amended complaints referenced above by **January 28, 2022**.

DISCOVERY-RELATED PROVISIONS

13. **ESI Protocol and Protective Order.** The parties agree that the ESI Protocol, Protective Order, and Order on Joint Stipulation Regarding *Ex Parte* Witness Contact Disclosures entered in the *In re Cattle, Peterson, In re DPP Beef*, and *Erbert & Gerbert's* actions (*e.g.*, *In re DPP Beef*, Case No. 20-cv-1319, ECF Nos. 93 ("ESI

Protocol”), 123 (“Protective Order”)), 134 (“Witness Contact Order”) shall be applicable to the *Winn-Dixie* action, and the *Winn-Dixie* Plaintiffs hereafter shall be a “party” or “Party” and one of the “parties” or “Parties” for all purposes in those orders.

14. The parties agree the discovery stay ordered on October 30, 2020, may be lifted. Following the parties’ November 3, 2021 Rule 26(f), the parties may serve additional discovery pursuant to Federal Rule of Civil Procedure 26(d)(1). No party waives any right to object to such discovery and/or seek a protective order for reasons unrelated to Federal Rule of Civil Procedure 26(d)(1).

15. The parties agree the following discovery-related deadlines shall apply in all cases coordinated with *In re Cattle and Beef Antitrust Litigation* and supersede any previously imposed deadlines for the same events:

<u>Event</u>	<u>Deadline</u>
Parties to engage in a Rule 26(f) conference.	November 3, 2021
Parties to file a joint Rule 26(f) report.	November 17, 2021
Parties to commence meeting and conferring regarding (1) Requests for Production previously served in these actions; and (2) associated custodian, non-custodial sources, and date range proposals.	Week of November 15, 2021

16. The Plaintiffs and Defendants in the *In re Cattle and Beef Antitrust Litigation* actions shall, respectively, work together to coordinate discovery, where appropriate and practicable, in a manner that reduces needless duplication and inefficiency, keeping in

mind the goal of Federal Rule of Civil Procedure 1 to promote the just, speedy, and inexpensive resolution of these cases.

17. Nothing in this stipulation shall constitute a waiver of (a) any jurisdictional defenses that may be available; (b) any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, any defense listed in Rule 12(b) of the Federal Rules of Civil Procedure, or otherwise; (c) any other defenses that may be available to Defendants; or (d) any discovery-related objections or reservations of rights that Defendants have asserted. Defendants have expressly reserved their rights to raise these and any other defenses and objections available to them.

18. A proposed order is being submitted to the Court herewith.

Dated: October 08, 2021

Respectfully submitted,

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